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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,381	02/25/2004	Joseph Battiston	629-1-033CON	2903

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EXAMINER

FETSUGA, ROBERT M

ART UNIT PAPER NUMBER

3751

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,381

Applicant(s)

BATTISTON, JOSEPH

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-26 is/are pending in the application.
- 4a) Of the above claim(s) 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-18, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>02/25/04</u> | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election without traverse of Group II, Species II, Sub-species B, in the reply filed on August 2, 2004 is acknowledged. Accordingly, claims 19-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b).

2. The drawings are objected to because reference numerals "40", "42" and "44" designate different elements between Figs. 1 and 2, and reference numerals "30" and "44" designate different elements between Figs. 1, 2, 3A and 3B.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "toilet" set forth in claims 12 and 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the

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several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following informalities: Page 5, line 22 and page 7, line 14, "32" denotes different elements; and page 7, line 14, "2A and 2B" apparently should be --3A and 3B--.

Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "upper portion", "lower portion", "wall", "elongated opening", "splash guard" and "arcuate extension", set forth in claims 12 and 25, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the

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descriptive portion of the specification by reference to the drawing(s).

5. Claims 16-18 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 16 recites a "slidingly interfitted" pan which language tailors the claim to the Fig. 2 embodiment. However, the claim depends from claim 12 which recites "a lower opening adapted to be in substantial alignment with a toilet".

Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The commode in Fig. 2 includes bars (unnumbered) extending between the legs 14,16 which would prohibit the commode from being aligned with a toilet.

6. Claims 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is unclear as to whether the "commode" is intended to be part of the claimed combination since structure of the

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"pan" is defined as being connected thereto, but no positive structural antecedent basis therefor has been defined.

Claim 17 is redundant to claim 12.

7. The claim hierarchy does not appear to be in accordance with MPEP 608.01(m). Claims remaining at allowance may require renumbering.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12-18, 25 and 26, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Battiston.

The Battiston reference discloses a pan comprising: an upper portion/rim 32 including an elongate opening 34; a lower portion 36 including a lower opening 44; a wall/splash

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guard/arcuate extension/arcuate front 38; and a commode 10, as claimed. Re claim 16, the pan is "capable of being affixed to said frame by being slidably interfitted" in the same sense as with applicant's claimed invention.

10. Claims 12-17, 25 and 26, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Carnahan et al.

The Carnahan et al. (Carnahan) reference discloses a pan comprising: an upper portion/rim 14 including an elongate opening (illustrated); a lower portion (of 16) including a lower opening (Figs. 2 and 3); a wall/splash guard/arcuate extension/arcuate front 16; and a commode 18, as claimed.

Alternatively in regards to claims 15-17, the pan is capable of being used with a commode when the claim is interpreted to functionally recite the commode. The noted interpretation appears to be reasonable as the combination of a commode and pan is the subject matter of non-elected claims 19-24.

11. Claim 18, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Carnahan and Davis.

Although the elongate opening of the Carnahan seat is not generally rectangular (oval), as claimed, attention is directed to the Davis reference which discloses an analogous seat 30 which further includes a generally rectangular opening (col. 1 lns. 56-59). Therefore, in consideration of Davis, it would

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have been obvious to one of ordinary skill in the art to associate a generally rectangular opening with the Carnahan seat in order to facilitate use by ambulatory people.

12. Claims 12-17, 25 and 26, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Klatt and Rose et al.

The Klatt reference discloses a pan comprising: an upper portion/rim 35 including an elongate opening (Fig. 3); a lower portion (of 33) including a lower opening (Fig. 1); a wall/splash guard/arcuate extension/arcuate front 33; and a commode 32. Re claim 16, the Klatt pan is capable of being slidably interfitted in the functionally recited manner. Therefore, Klatt teaches all claimed elements except for the "arcuate extension" as illustrated in applicant's Fig. 3B.

Although the splash guard of the Klatt pan does not include an "arcuate extension", as disclosed, attention is directed to the Rose et al. (Rose) reference which discloses an analogous pan 36 which further includes an "arcuate extension" splash guard (Fig. 6). Therefore, in consideration of Rose, it would have been obvious to one of ordinary skill in the art to associate an "arcuate extension" splash guard with the Klatt pan in order to facilitate waste flow.

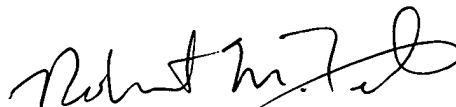
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13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klatt and Rose as applied to claim 17 above, and further in view of Davis.

To associate a generally rectangular opening with the Klatt seat would have been obvious to one of ordinary skill in the art in consideration of Davis analogous to the discussion supra.

14. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

15. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 703/308-1506 who can be most easily reached Monday through Thursday.



Robert M. Fetsuga
Primary Examiner
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